



State of Wisconsin  
Governor Scott Walker

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**Department of Agriculture, Trade and Consumer Protection**  
Ben Brancel, Secretary

**DATE:** November 27, 2013

**TO:** Board of Agriculture, Trade and Consumer Protection

**FROM:** Ben Brancel, Secretary *Ben Brancel*  
Daniel Smith, Administrator, Division Agricultural Development *Paul R. Smith*

**SUBJECT: DAIRY PROCESSOR GRANTS; Rulemaking Scope Statement;  
ATCP 161.62**

**TO BE PRESENTED BY:** Daniel Smith and Staff

**REQUESTED ACTION:**

At the December 10, 2013 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to approve a "Statement of Scope" (copy attached) for an emergency and permanent rule related to dairy processor grants. The emergency and permanent rules are necessitated by the addition of authority to make grants to dairy processors and general purpose revenue funding appropriated to the Department as part of 2013 Wis. Act 20, the Biennial Budget. An emergency rule is necessary to ensure that funds are used to assist dairy processors during the first year of the annual appropriation as the legislation does not contain standards DATCP will use to make grant determinations and permanent rules cannot be adopted in time to provide the basis for grant determinations for that first year appropriation.

A scope statement spells out the general purpose and scope of a proposed rule. DATCP may not begin drafting a proposed emergency or permanent rule until the Governor approves a scope statement for the proposed rule and the DATCP Board approves the scope statement.

DATCP must publish a draft scope statement in the Wisconsin Administrative Register, and file a copy with the Department of Administration (DOA), at least 10 days before the Board approves the scope statement. DATCP filed the attached statement of scope with the Legislative Reference Bureau for publication in the November 15, 2013 issue of the Wisconsin Administrative Register. DATCP also filed a copy with DOA.

If the Board approves the scope statement, the Department will begin work to draft the emergency and permanent rule. For the emergency rule DATCP will need to obtain written approval from the Governor. After receiving the Governor's written approval DATCP will publish the rule in the official state newspaper at which point the emergency rule will become effective. The emergency rule will remain in effect for 150 days with the possibility of two 60 day extensions with the approval of the Joint Committee for Review of Administrative Rules.

Approval of a scope statement is just the first, preliminary step in a lengthy process for enacting permanent rules. The Board will have at least two further opportunities to review the proposed

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permanent rule. The Board must approve a hearing draft rule before DATCP may hold public hearings on the permanent rule proposal. The Board must also approve the final draft rule before DATCP may adopt the rule. The permanent rule will be effective when the final draft has been approved by the DATCP Board, approved by the Governor, completed the legislative review process and adopted by the Secretary.

# STATEMENT OF SCOPE

## Department of Agriculture, Trade and Consumer Protection (DATCP)

Rule No.: Section ATCP 161.62, Wis. Adm. Code (Existing)

Relating to: Dairy Processor Grants

### 1. Description of the objective of the rule:

The Department of Agriculture, Trade and Consumer Protection (DATCP) proposes an emergency and permanent rule that will establish criteria DATCP will use to make determinations for grants to dairy processors to promote and develop the dairy industry. The emergency and permanent rules are necessitated by the addition of authority and general purpose revenue funding appropriated to the Department as part of 2013 Wis. Act 20, the Biennial Budget.

### 2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:

History and background. In 2013 Wis. Act 20, the budget act, Section 203 created the following appropriation:

20.115 (4) (dm) Dairy processor Plant Grant Program. The amounts in the schedule for promoting the growth in the dairy industry by providing grants to persons operating processing plants as defined in s. 97.20 (1) (h). The appropriation is an annual appropriation of \$200,000.

#### Nature of the Emergency

An emergency rule is necessary to ensure that funds are used to assist dairy processors during the first year of the annual appropriation as the legislation does not contain standards DATCP will use to make grant determinations and permanent rules cannot be adopted in time to provide the basis for grant determinations for that first year appropriation. The emergency rule is necessary for the welfare of those dairy processors who the Legislature has determined require assistance to maintain and expand their operations and for the welfare of the entire dairy industry. DATCP anticipates that the emergency and permanent rules will have the same provisions.

#### Policy Alternatives

Do nothing. If DATCP fails to adopt rules that contain the basis for grant determinations it will not be able to expend the funds and provide the assistance to dairy processors that the Legislature directed in 2013 Act 20, the biennial budget.

**3. Statutory authority for the rule (including the statutory citation and language):**

Section 93.07 (1), Stats., directs DATCP to make such regulations as are necessary for the discharge of all the powers and duties of the department. While granting the authority to make grants to dairy processors, the budget language does not specify the bases for grant determinations. The agency considers it necessary to adopt rules to establish the bases for grant and loan determinations in order to effectuate the purposes of s. 20.114 (4) (dm), Stats.

**4. Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:**

DATCP estimates that it will use approximately 0.25 FTE staff to develop this rule. This includes time required for the investigation and analysis, financial assistance criteria, rule drafting, preparing related documents, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

**5. Description of all entities that may be impacted by the rule:**

This rule will enable dairy processors to obtain financial assistance to expand, modernize, or improve the efficiency or profitability of their operations or who seek product, market or production process opportunities.

**6. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule:**

The United States Department of Agriculture's Rural Development Agency Value Added Producer Grant Program offers funding for activities that expand markets or add value to agricultural products.

**7. Anticipated economic impact**

The proposed rule will enable DATCP to provide financial assistance to dairy processors who wish to expand, modernize, or improve the efficiency or profitability of their operations or who seek product, market or production process opportunities. DATCP expects the proposed rule to have a positive economic impact upon the dairy industry and to have no negative economic impact statewide and locally.

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Ben Brancel

Secretary

Department of Agriculture, Trade and Consumer Protection

10-18-13

Date Submitted